



May 13, 2002

Ms. Lisa Aguilar
Assistant City Attorney
City of Corpus Christi
P.O. Box 9277
Corpus Christi, Texas 78469-9277

OR2002-2517

Dear Ms. Aguilar:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 162782.

The City of Corpus Christi (the "city") received a request for "a copy of All correspondence, request for bids, a list of the bidders, the bids themselves, and the awarded contract to the winning contractor and the competing contractors for the [city's] online bill paying service, which was awarded recently to Texas Local Interactive." Initially, we note that you have only submitted to our office for review a portion of the requested information, that which you state the vendors labeled "confidential" or "proprietary." You have not submitted to this office, nor do you inform us that you have released to the requestor, the remaining requested information. Therefore, you must immediately release such information to the requestor if you have not already done so. *See Gov't Code §§ 552.006, .301(a), .302.*

You state that the submitted information that has been labeled "confidential" or "proprietary" by the vendors may be excepted from disclosure under sections 552.101 and 552.110 of the Government Code. Although you make no arguments in support of these exceptions, pursuant to section 552.305, you notified representatives of KPMG Consulting, Tele-Works, Inc., and CSDC Systems, Inc. of the request for their information and invited these entities to submit arguments to this office as to why the information at issue should not be released.¹ None of these entities submitted arguments to this office. Therefore, we have no basis on which to conclude that the submitted information is excepted from disclosure under section 552.110. *See Gov't Code § 552.110(b)* (to prevent disclosure of commercial or

¹*See Gov't Code § 552.305* (permitting interested third party to submit to attorney general reasons why requested information should not be released); *Open Records Decision No. 542* (1990) (determining that statutory predecessor to Gov't Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in Public Information Act in certain circumstances).

financial information, party must show by specific factual or evidentiary material, not conclusory or generalized allegations, that it actually faces competition and that substantial competitive injury would likely result from disclosure); Open Records Decision Nos. 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3 (1990).

We do note that the materials submitted to the city by Tele-Works, Inc. state that “[t]his material is protected under Section 252.049 of the Texas Local Government Code and represents confidential information not considered public information.” Section 252.049 of the Local Government Code provides as follows:

- (a) Trade secrets and confidential information in competitive sealed bids are not open for public inspection.
- (b) If provided in a request for proposals, proposals shall be opened in a manner that avoids disclosure of the contents to competing offerors and keeps the proposals secret during negotiations. All proposals are open for public inspection after the contract is awarded, but trade secrets and confidential information in the proposals are not open for public inspection.

However, this provision is merely duplicative of the protection offered to proprietary information under section 552.110 of the Government Code. Because neither Tele-Works, Inc. or any of the other bidders have demonstrated that the information at issue constitutes trade secrets or is otherwise made confidential by law, section 252.049 is inapplicable here. We therefore conclude that the city must release the information at issue in its entirety, with the following exception.

We note that the CSDC Systems, Inc. information contains an e-mail address that is excepted from public disclosure under section 552.137 of the Government Code. Section 552.137 provides that “[a]n e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under [the Public Information Act].” Therefore, unless the relevant individual has affirmatively consented to the release of his e-mail address, the city must withhold the e-mail address in the submitted information that we have marked under section 552.137 (see green flag).

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by

filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/seg

Ref: ID# 162782

Enc. Submitted documents

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